

New Water Withdrawal Law for Michigan!

New laws that became effective on February 28, 2006, will help Michigan better manage the tremendous water resources that support our economy, environment, and quality of life. These laws amend Parts 327 and 328 of the Natural Resources and Environmental Protection Act, and the Safe Drinking Water Act. These amendments address reporting, registering, environmental protection standards, and permitting requirements for large quantity withdrawals from groundwater and surface water. This summary provides an overview of these new provisions. For detailed information, review the specific terms of Parts [327](#) and [328](#).

Large Quantity Withdrawal

A “large quantity withdrawal” is a withdrawal greater than 100,000 gallons per day (gpd) averaged over a consecutive 30-day period. Many of the laws’ provisions apply to a “new or increased” large quantity withdrawal, which is a withdrawal greater than 100,000 gpd averaged over a 30-day period beyond “baseline capacity.” Baseline capacity represents the volume of withdrawal that existed when the new law became effective. It is measured in different ways:

- For a public drinking water supply owned by a local unit of government, baseline capacity is the total design capacity for the water supply system permitted under the Safe Drinking Water Act (SDWA).
- For a quarry or mine that holds an authorization to discharge wastewater to surface or groundwater, baseline capacity is the discharge volume contained in that authorization.
- For all other withdrawals, baseline capacity is the capacity of the system used to make the withdrawal on February 28, 2006.

In the second and third situations, baseline capacity must be reported to the Michigan Department of Environmental Quality (MDEQ) in a report due April 1, 2007. If baseline capacity is not reported, the MDEQ will use the highest withdrawal volume submitted in prior reports to determine baseline capacity.

Registration

Every large quantity withdrawal must be registered with the MDEQ under Part 327. There are several exceptions as follows:

- A withdrawal by a local unit of government for a community water supply that is permitted under the SDWA.
- A withdrawal permitted under Part 327.

- A withdrawal for agricultural purposes. This type of withdrawal must be registered with the Michigan Department of Agriculture (MDA).

An existing withdrawal that has not previously been registered under Part 327 must be registered by May 28, 2006. A new or increased large quantity withdrawal must be registered before the withdrawal can begin.

Reporting

A person making a large quantity withdrawal must report the volume of that withdrawal to the MDEQ by April 1 of each year on a form provided by the MDEQ. There is an annual \$200 reporting fee, which is slated to be reduced to \$100 in two years. Fees are used to help defray the cost of administering the program. Agricultural operations report to the MDA and do not pay the reporting fee. A person who withdraws less than 1.5 million gallons within the year need only certify that the withdrawal was less than that volume.

Adverse Resource Impacts

Part 327 prohibits a new or increased large quantity withdrawal from causing an “adverse resource impact.” An adverse resource impact is defined as impairing the lake or stream’s ability to support its characteristic fish population. The Michigan Department of Natural Resources (MDNR) can determine the characteristic fish population of a stream by comparing the amount of groundwater contributing to stream flow to the size of the stream’s watershed. Taking too much water from a stream will change the flow depth, velocity, and temperature of the stream and hence the types of fish expected to be found there. Until February 28, 2008, Part 327 prohibits an adverse resource impact only to trout streams. After that date, it prohibits an adverse resource impact to all streams and lakes.

Permits

Certain new or increased large quantity withdrawals need a permit under Part 327, as described below:

- A new or increased withdrawal from an inland lake or stream of greater than two million gpd unless it is a seasonal withdrawal that averages no more than two million gpd averaged over a consecutive 90-day period.
- A new or increased withdrawal from a Great Lake of greater than five million gpd.

A permit will not be granted if the withdrawal would cause an adverse resource impact. If the withdrawal is from a Great Lake, all water withdrawn, less

consumptive use, must be returned to the Lake's watershed. The withdrawal must comply with other laws, including regional and international agreements concerning use of Great Lakes water. The proposed use must be reasonable under traditional Michigan water law. And, the applicant must consider voluntarily adopting water-use conservation measures.

There is a \$2,000 permit fee. A person proposing a withdrawal that does not need a permit may request the MDEQ to determine whether the withdrawal would cause an adverse resource impact. There is a \$5,000 fee.

Other Permit Provisions

Several activities previously regulated by the SDWA are affected by the water withdrawal legislation as follows:

- A community water withdrawal by a local unit of government that is permitted under the SDWA does not need a permit under Part 327. However, the adverse resource impact standard now applies if the withdrawal is over two million gpd from an inland source or five million gpd from a Great Lake. Because of the importance of providing water to communities, the permit may still be granted even if there would be an adverse resource impact provided that there are no feasible or prudent alternative locations for the withdrawal and the withdrawal is conducted in a manner to limit the impact of the withdrawal.
- A new permit is required for a water bottling operation that uses a new or increased large quantity withdrawal of more than 250,000 gpd. This permit can only be granted if the withdrawal would not cause an adverse resource impact, the use is reasonable under traditional Michigan water law, riparian rights are protected, and the water bottler undertakes activities to address the hydrologic impact of the withdrawal.

Other Provisions

There are several other important provisions of the water withdrawal legislation:

- The Groundwater Conservation Advisory Council is to develop a "water withdrawal assessment tool" to help determine the effect of a withdrawal on water dependent natural resources and waters of the state. The council will be administered by the MDNR.
- The creation of voluntary water user committees is encouraged. These committees would help plan for long-term water use within individual watersheds.

- Water-user sectors are to develop guidelines for voluntary water use conservation practices.
- The MDEQ is given limited emergency order authority to prevent an adverse resource impact.